

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl.Revsn No.2455 of 2006

Date of Decision :20.7.2007

Padam Kumar

....Petitioner

Vs.

The State of Punjab

.... Respondent

Present: Mr.Satbir Gill, Advocate
 for the petitioner.
 Mr.Mukesh Kaushik, DAG, Punjab.

S.S.Saron,J.

The petitioner has impugned the order dated 27.5.2006 (Annexure P-1) whereby the application for the grant of an opportunity of being heard to the petitioner-complainant before cancellation report of case FIR No.21 dated 21.1.2005 registered at Police Station City Abohar for the offences under Section 363, 364-A, 365, 348, 389, 420, 506, 120-B IPC, has been declined.

Learned counsel for the petitioner has submitted that the petitioner had received a letter from Police Station City Abohar on 15.9.2005 to the effect that during the investigation, the above said case has been found false and the police is going to submit cancellation report. Accordingly, the petitioner submitted an application dated 19.9.2005 (Annexure P-2) before Sub Divisional Judicial Magistrate, Abohar for grant of an opportunity of hearing to him before cancellation report in respect of the FIR is accepted. However, the said application

has been dismissed by the learned Sub Divisional Judicial Magistrate, Abohar in pursuance to the impugned order dated 27.5.2005 which reads as under:-

“Despite a various opportunities neither the complainant being served nor the I.O. is appearing. It appears that the police is not interested in further pursuing the matter. The request is declined. File be sent to the concerned quarters and the judicial papers be consigned separately.”

A perusal of the above order shows that it has been observed that despite various opportunities given, neither the complainant nor the I.O. was appearing and that it appeared that the police was not interested in pursuing the matter. Accordingly, the request made by the petitioner has been declined.

The petitioner has referred to the various interim orders passed by the learned Sub Divisional Judicial Magistrate, Abohar and submitted that in fact the petitioner was duly present in the court on almost all the dates. He was present on 28.9.2005 and thereafter on 29.9.2005. On 28.9.2005, notice on the application (Annexure P-2) submitted by the petitioner was given to the APP for 5.10.2005. The cancellation report was presented on 29.9.2005 and it was put up for 5.10.2005. On 5.10.2005, notice was issued to the I.O. and the complainant i.e. the petitioner for 17.12.2005. The complainant was present on 17.12.2005, 22.2.2006 and 18.3.2006. The complainant therefore, was present on most of the dates of hearing. In fact the case was being adjourned for securing the presence of the I.O. As such the

order passed by learned Sub Divisional Judicial Magistrate, Abohar dismissing the application of the complainant is without basis and has resulted in miscarriage of justice to the petitioner.

Accordingly, the Criminal Revision Petition is allowed and the impugned order dated 27.5.2006 (Annexure P-1) is set aside. The learned trial Magistrate shall hear the petitioner and thereafter consider whether the cancellation report presented on 29.9.2005 is liable to be accepted. The petitioner and the State shall appear in the Court of the learned Sub Divisional Magistrate on 11.9.2007 for further proceedings.

Criminal revision stands allowed.

[S.S.Saron]
Judge

20.07.2007
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